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Statewide Enterprises and International Brotherhood of Painters and Allied Trades, Southern California Painters and Allied Trades. Case 21-CA-32262

July 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge filed by the Union on September 8, 1997, the Acting General Counsel of the National Labor Relations Board issued a complaint on June 2, 1998, against Statewide Enterprises, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 14, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On July 15, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 18, 1998, notified the Respondent that unless an answer were received by June 26, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business in Los

Angeles, California, has been engaged in the construction industry as a painting contractor. During the 12-month period ending August 31, 1997, a representative period, the Respondent, in conducting its operations, provided services valued in excess of \$50,000 to the Los Angeles Unified School District, an enterprise within the State of California which, during the same period of time, purchased and received goods valued in excess of \$50,000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 23, 1997, the Respondent terminated employee Cesar Mendez because he concertedly complained to the Respondent regarding wages, hours, and working conditions of the Respondent's employees by complaining about the Respondent's requirement that employees sign blank checks in order to receive their pay checks.

About September 3, 1997, the Respondent terminated employee Jose Alcanzar because he engaged in protected concerted activity about September 2, 1997, by joining the Union in filing a "stop payment" form with the Los Angeles Unified School District as a means of protesting the Respondent's failure to pay employees prevailing wage rates, and because he concertedly complained to the Respondent about September 3, 1997, regarding the wages, hours, and working conditions of the Respondent's employees by refusing to comply with the Respondent's requirement that employees sign blank checks in order to receive their pay checks.

About September 3, 1997, the Respondent interrogated Alcanzar regarding his union activities and his protected concerted activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By terminating Mendez and Alcanzar, the Respondent has been discriminating in regard to the terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Jose Alcanzar and Cesar Mendez, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Statewide Enterprises, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating employees because they concertedly complain regarding employee wages, hours, and working conditions or because they join the Union in filing a "stop payment" form with the Los Angeles Unified School District as a mean of protesting the Respondent's failure to pay employees prevailing wage rates.

(b) Interrogating employees regarding their union activities or protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Jose Alcanzar and Cesar Mendez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Jose Alcanzar and Cesar Mendez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order expunge from its files any and all references to the unlawful discharges of Jose Alcanzar and Cesar Mendez, and, within 3 days thereafter, notify them in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 23, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 1998

Sarah M. Fox, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT terminate employees because they concertedly complain regarding employee wages, hours, and working conditions or because they join the International Brotherhood of Painters and Allied Trades, Southern California Painters and Allied Trades in filing a "stop payment" form with the Los Angeles Unified School District as a means of protesting our failure to pay employees prevailing wage rates.

WE WILL NOT interrogate employees regarding their union activities or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Jose Alcanzar and Cesar Mendez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jose Alcanzar and Cesar Mendez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharges of Jose Alcanzar and Cesar Mendez, and, within 3 days thereafter, notify them in writing that this has been done.

STATEWIDE ENTERPRISES